

**Breezy Point Mining, Inc.; James Timothy Meisel, Trustee in Bankruptcy and United Mine Workers of America and Local Union 5921 of District 17, United Mine Workers of America.**  
Cases 9-CA-28195, 9-CA-28438, 9-CA-28571, and 9-CA-28335

June 30, 1992

## DECISION AND ORDER

CHAIRMAN STEPHENS AND DEVANEY AND  
OVIATT

Upon charges filed between January 25 and June 19, 1991, by the International and Local Unions, on February 19, 1992, the General Counsel of the National Labor Relations Board issued an order consolidating cases, amended second consolidated complaint and notice of hearing in the above cases against Breezy Point Mining, Inc.; James Timothy Meisel, Trustee in Bankruptcy, the Respondent, alleging that it has violated Section 8(a)(1), (4), and (5) of the National Labor Relations Act. Although Respondent initially filed answers in the cases, on May 15, 1992, James Timothy Meisel, Trustee in Bankruptcy of Breezy Point Mining, Inc., filed a withdrawal of answers in the cases.

Thereafter, on May 26, 1992, the General Counsel filed a Motion for Summary Judgment with the Board. On May 29, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

### Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The amended second consolidated complaint states that unless an answer is filed within 14 days of service, "all the allegations in the amended second consolidated complaint shall be considered to be admitted to be true and shall be so found by the Board." The undisputed allegations in the Motion for Summary Judgment disclose that, although the Respondent initially filed answers in the cases, it subsequently withdrew those answers. Such a withdrawal has the same effect as a failure to file an answer, i.e., the allegations in the complaint must be deemed to be

admitted to be true.<sup>1</sup> Accordingly, in the absence of good cause shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

## FINDINGS OF FACT

### I. JURISDICTION

The Respondent, a corporation, has been engaged in the mining and sale of coal at a facility located in the vicinity of Sarah Ann, West Virginia. During the 12 months preceding issuance of the amended second consolidated complaint, the Respondent, in conducting its operations, sold and shipped from its West Virginia facility goods valued in excess of \$50,000 directly to points outside the State of West Virginia. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

### II. ALLEGED UNFAIR LABOR PRACTICES

#### A. *The Unit and the Union's Representative Status*

The following employees of Respondent (the unit) constitute a unit appropriate for the purposes of collective bargaining:

All employees of the Employer engaged in the production of coal, including removal of overburden and coal waste, preparation, transportation of coal (except by waterway or rail not owned by [Respondent]), repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Respondent], excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

Since March 14, 1990, and at all material times, the International Union has been the designated exclusive collective-bargaining representative of the unit, which has been serviced by the Local Union, and since that date has been recognized as such representative by Respondent. Such recognition has been embodied in a collective-bargaining agree-

<sup>1</sup> See *Maislin Transport*, 274 NLRB 529 (1985).

ment (the 1988 National Bituminous Coal Wage Agreement) which is effective by its terms for the period February 1, 1988, to February 1, 1993.

At all times since March 14, 1990, the International Union, based on Section 9(a) of the Act, has been the exclusive representative of the unit for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment.

#### *B. The Violations*

About January 22, 1991, Respondent threatened employees with closure of its mine if they pursued a grievance concerning Respondent's failure to pay contractual wage rates and benefits.

About February 22, 1991, Respondent impliedly threatened employees with lack of future employment if they were involved in the filing or investigation of unfair labor practice charges filed with the Board.

About February 22 and 23, 1991, Respondent impliedly threatened an employee with discharge because the employee engaged in protected concerted activities.

About February 25, 1991, Respondent laid off its employees Everett Vance, Opie Tomblin, John Vance, Michial Vance, James Castle, Ricky Queen, David Ellis, William Mullins, and Bobby May, because these employees gave testimony to the Board and participated in the investigation in Case 9-CA-28195 or because said employees attempted to obtain certain contractual benefits.

Since about July 15, 1990, Respondent has failed to maintain in full force and effect all the terms and conditions of the collective-bargaining agreement described above in section II.A, by its failure to pay contractual wage rates and certain fringe benefits, including shift differential pay, sick days, and floating days.

About May 7, 1991, Respondent notified the Union that it would no longer abide by any contractual provisions, including the provision for medical benefits for laid-off employees.

The terms and conditions of the agreement that Respondent has failed to continue in full force and effect, as described above, are terms and conditions of employment of the employees in the unit and are mandatory subjects of bargaining.

About March 13, 25, and 28, 1991, the Union, in writing, requested Respondent to furnish it with the following information relevant to the processing of a grievance: a copy of Breezy Point Mining's #2 seniority list; a list of all salaried employees and their positions at Breezy Point Mining #2, and what shift they are on; a copy of the recent realignment list with all classified employees re-

tained, job title, and shift at Breezy Point Mining #2; the time, date, and mine committee with whom management met to discuss the realignment; a copy of all time-sheets on all shifts from February 25, 1991, to March 25, 1991; the name of any laid-off employees that have been recalled since the February 1991 realignment; and confirmation that two classified employees named Timothy Cline and Clark Blackburn have been employed. In addition, on May 1, 1991, the Union requested the Respondent to furnish it with the following information relevant to the closing of Breezy Point Mining: a complete roster of all employees and their addresses, a copy of the last payroll, a copy of all dues records from January 1, 1991, a copy of all insurance policies and proof of continuation of coverage, the date of the employee's next payday when they can expect their remaining pay, and a copy of any lease, sublease, contract mining agreement, and/or any such contract or document giving Breezy Point the authority to conduct mining operations.

The information requested by the Union, as described above, is necessary for, and relevant to, the Union's performance of its function as the exclusive collective-bargaining representative of the unit.

Since about April 4, 1991, Respondent has failed and refused to furnish the Union the information requested by it as described above.

#### CONCLUSIONS OF LAW

1. By threatening employees on January 22, 1991, with closure of its mine if they pursued a grievance concerning Respondent's failure to pay contractual wages and benefits, impliedly threatening employees on February 22, 1991, with lack of future employment if they were involved in filing or investigation of unfair labor practice charges filed with the Board, and impliedly threatening an employee on February 22 and 23, 1991, with discharge because the employee engaged in protected concerted activities, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By laying off employees Everett Vance, Opie Tomblin, John Vance, Michial Vance, James Castle, Ricky Queen, David Ellis, William Mullins, and Bobby May on February 25, 1991, because these employees gave testimony to the Board and participated in the investigation in Case 9-CA-28195 or because said employees attempted to obtain certain contractual benefits, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (4) and Section 2(6) and (7) of the Act.

3. By failing since July 15, 1990, to maintain in full force and effect all the terms of the agreement described above, including shift differential pay, sick days and floating days, notifying the Union on May 7, 1991, that it would no longer abide by any contractual provisions, including the provision for medical benefits for laid-off employees, and failing and refusing since April 4, 1991, to provide the Union with necessary and relevant information, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully laid off employees Everett Vance, Opie Tomblin, John Vance, Michial Vance, James Castle, Ricky Queen, David Ellis, William Mullins, and Bobby May, we shall order the Respondent to offer these employees immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent jobs, without prejudice to their seniority and other rights and privileges, and to make them whole for any loss of earnings as a result of the discrimination against them, with backpay calculated as set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest in the manner prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent has failed to maintain in full force and effect all the terms of the collective-bargaining agreement as described above by failing to pay contractual wage rates and certain fringe benefits, including shift differential pay, sick days and floating days, and medical benefits for laid-off employees, we shall order the Respondent to make the unit and laid-off employees whole by making the contractually required wage and benefit payments which have not been paid and that would have been paid absent the Respondent's unilateral discontinuance of the payments. We shall also order the Respondent to reimburse the unit and laid-off employees for any expenses they incurred because of its failure to make the required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has failed and refused to provide the Union with necessary and relevant information, we shall order the

Respondent to furnish the information to the Union on request.

#### ORDER

The National Labor Relations Board orders that the Respondent, Breezy Point Mining, Inc., James Timothy Meisel, Trustee in Bankruptcy, Delbarton, West Virginia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Threatening employees with closure of its mine if they pursued a grievance concerning Respondent's failure to pay contractual wages and benefits.

(b) Impliedly threatening employees with lack of future employment if they were involved in filing or investigation of unfair labor practice charges filed with the Board.

(c) Impliedly threatening employees with discharge because they engaged in protected concerted activities.

(d) Laying off employees because they gave testimony to the Board and participated in the Board investigation or because they attempted to obtain certain contractual benefits.

(e) Failing to maintain in full force and effect all the terms of the February 1, 1988–February 1, 1993 collective-bargaining agreement with the Union in the unit described below, including shift differential pay, sick days and floating days, and medical benefits for laid-off employees:

All employees of the Employer engaged in the production of coal, including removal of overburden and coal waste, preparation, transportation of coal (except by waterway or rail not owned by [Respondent]), repair and maintenance work normally performed at the mine site or at a central shop[s] of [Respondent] and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by [Respondent], excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

(f) Failing and refusing to provide the Union with necessary and relevant information.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer its laid-off employees Everett Vance, Opie Tomblin, John Vance, Michial Vance, James Castle, Ricky Queen, David Ellis, William Mullins, and Bobby May, immediate and full reinstatement and make them whole for any losses suffered in the manner set forth in the remedy section of this decision.

(b) Honor and give retroactive effect from the date of discontinuance the terms and conditions of the collective-bargaining agreement with the Union, including the wage and benefit provisions, and make the unit and laid-off employees whole in the manner set forth in the remedy section of this decision.

(c) On request, provide the Union with the information it requested on March 13, 25, and 28 and May 1, 1991.

(d) Post at its facility in Delbarton, West Virginia, copies of the attached notice marked "Appendix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup>If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten employees with closure of our mine if they pursue a grievance concerning our failure to pay contractual wages and benefits.

WE WILL NOT impliedly threaten employees with lack of future employment if they were in-

volved in filing or investigation of unfair labor practice charges filed with the Board.

WE WILL NOT impliedly threaten employees with discharge because they engaged in protected concerted activities.

WE WILL NOT lay off employees because they gave testimony to the Board and participated in the Board investigation or because they attempted to obtain certain contractual benefits.

WE WILL NOT fail to maintain in full force and effect all the terms of the February 1, 1988—February 1, 1993 collective-bargaining agreement with the Union in the unit described below, including shift differential pay, sick days and floating days, and medical benefits for laid-off employees:

All employees of the Respondent engaged in the production of coal, including removal of overburden and coal waste, preparation, transportation of coal (except by waterway or rail not owned by the Employer), repair and maintenance work normally performed at the mine site or at a central shop[s] of the Employer and maintenance of gob piles and mine roads, and work of the type customarily related to all of the above at the coal lands, coal producing and coal preparation facilities owned or operated by the Employer, excluding all coal inspectors, weigh bosses at mines where men are paid by the ton, watchmen, clerks, engineering and technical employees and all professional employees, guards and supervisors as defined in the Act.

WE WILL NOT fail or refuse to provide the Union with necessary and relevant information.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL offer our laid-off employees Everett Vance, Opie Tomblin, John Vance, Michial Vance, James Castle, Ricky Queen, David Ellis, William Mullins, and Bobby May, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority and other rights or privileges previously enjoyed, and make them whole for any loss of earnings they may have suffered by reason of our unlawful layoffs, with interest.

WE WILL honor and give retroactive effect from the date of discontinuance the terms and conditions of the collective-bargaining agreement with the Union, including the wage and benefit provisions, and WE WILL make the unit and laid-off employees whole for their losses.

WE WILL, on request, provide the Union with the information it requested on March 13, 25, and 28 and May 1, 1991.

BREEZY POINT MINING, INC.; JAMES  
TIMOTHY MEISEL, TRUSTEE IN  
BANKRUPTCY